

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

Appeal No. & Caption	Frank Trionfo, et al. v. Bank of America, N.A. No. 15-2068
Originating No. & Caption	Frank Trionfo, et al. v. Bank of America, N.A. No. 15-cv-00925
Originating Court/Agency	The United States District Court for the District of Maryland

Jurisdiction (answer any that apply)		
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. § 1291	
Time allowed for filing in Court of Appeals	30 days	
Date of entry of order or judgment appealed	9/02/2015	
Date notice of appeal or petition for review filed	9/10/2015	
If cross appeal, date first appeal filed		
Date of filing any post-judgment motion		
Date order entered disposing of any post-judgment motion		
Date of filing any motion to extend appeal period		
Time for filing appeal extended to		
Is appeal from final judgment or order?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
If appeal is not from final judgment, why is order appealable?		

Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-521-4022.)		
Is settlement being discussed?	<input checked="" type="radio"/> Yes	<input type="radio"/> No

Transcript (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Has transcript been filed in district court?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

Case Handling Requirements (answer any that apply)		
Case number of any prior appeal in same case		
Case number of any pending appeal in same case		
Identification of any case pending in this Court or Supreme Court raising similar issue	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

Nature of Case (Nature of case and disposition below. Attach additional page if necessary.)
<p>In January 2013, the United States Consumer Financial Protection Bureau issued a number of regulations supplementing the provisions of the Real Estate Settlement Procedures Act (RESPA) requiring mortgage servicers to follow certain guidelines for processing loss mitigation applications. See 12 C.F.R. § 1024.41 (the "Loss Mitigation Guidelines"). These guidelines became effective on January 10, 2014.</p> <p>Appellants Frank and Suzanne Trionfo are homeowners whose mortgage loan is serviced by Appellee Bank of America, N.A. Due to financial hardship brought on by medical problems and the Great Recession, Appellants fell behind on their mortgage payments. Appellee notified Appellants of their delinquency and encouraged them to apply for loss mitigation programs offered by Appellee to prevent foreclosure on their home—such as a loan modification or repayment plan. On March 24, 2014, Appellants submitted a complete loss mitigation application to Appellee.</p> <p>(continued on attached page)</p>

Nature of Case

(...continued)

On March 31, 2015, Appellants filed a Class Action Complaint on behalf of themselves and all others similarly situated in the U.S. District Court for the District of Maryland. The Complaint alleged that Appellee violated RESPA because Appellee failed to adhere to the requirements of the Loss Mitigation Guidelines. Appellants also alleged that Appellee's conduct with regard to Appellants' loss mitigation programs violated the Maryland Consumer Protection Act (MCPA), Md. Comm. Law, §§ 13-101 *et. seq.*

On May 26, 2015, Appellee filed a motion to dismiss the Complaint, which Appellants opposed. On September 2, 2015, the district court issued an order granting Appellee's motion to dismiss and closing the case. On September 10, 2015, Appellants timely filed their notice of appeal.

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

1. Did the district court err in dismissing Appellants' RESPA claim based on factual assertions made by Appellee that were not part of the allegations in the Complaint?
2. Did the district court err in dismissing Appellants' RESPA claim by applying the Loss Mitigation Guidelines retroactively?
3. Did the district court err in ruling that Appellants failed to state a claim for violation of MCPA § 13-301(5)?
4. Did the district court err in ruling that Appellants failed to allege claims under MCPA §§ 13-301(1), (3), (9) and 13-303(4)-(5)?
5. Did the district court err by refusing to consider allegations in the Complaint that were relevant to Appellants' claims?
6. Did the district court err in ruling that Appellants' had failed to adequately allege a violation of MCPA § 13-316(c)?

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party: Bank of America, N.A.

Attorney: Keith Levenberg

Address: Goodwin Procter LLP
 901 New York Ave, N.W.
 Washington, D.C. 20001

E-mail: klevenberg@goodwinprocter.com

Phone: (202) 346-4000

Adverse Party: Bank of America, N.A.

Attorney: James W. McGarry

Address: Goodwin Procter LLP
 53 State St.
 Boston, MA 02109

E-mail: jmcgarry@goodwinprocter.com

Phone: (617) 570-1000

Adverse Parties (continued)

Adverse Party:

Attorney:

Address:

E-mail:

Phone:

Adverse Party:

Attorney:

Address:

E-mail:

Phone:

Appellant (Attach additional page if necessary.)	
Name: Frank Trionfo and Suzanne Trionfo Attorney: Lorenzo B. Cellini Address: 2000 L Street, N.W. Suite 808 Washington, D.C. 20036 E-mail: lcellini@tzlegal.com Phone: (202) 973-0900	Name: Frank Trionfo and Suzanne Trionfo Attorney: Jonathan K. Tycko Address: 2000 L Street, N.W. Suite 808 Washington, D.C. 20036 E-mail: jtycko@tzlegal.com Phone: (202) 973-0900
Appellant (continued)	
Name: Frank Trionfo and Suzanne Trionfo Attorney: Geoffrey G. Bestor Address: The Bestor Law Firm 2701 Calvert Street, N.W, #1109 Washington, D.C. 20008 E-mail: gbesq@bestorlaw.com Phone: (240) 463-8503	Name: Attorney: Address: E-mail: Phone:
Signature: <u>/s/ Lorenzo B. Cellini</u> Date: <u>9/25/2015</u> Counsel for: <u>Frank Trionfo and Suzanne Trionfo</u>	
Certificate of Service: I certify that on <u>Sept. 25, 2015</u> the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below (Attach additional page if necessary):	
Keith Levenberg Goodwin Procter LLP 901 New York Ave, N.W. Washington, D.C. 20001	James W. McGarry Goodwin Procter LLP 53 State St. Boston, MA 02109
Signature: <u>/s/ Lorenzo B. Cellini</u>	Date: <u>9/25/2015</u>